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SUBJECT: APRIL 2009 TRADE POLICY REVIEW OF THE EC

11. SUMMARY: WTO Members conducted the Trade Policy Review of the European Communities (EC) on April 6 and 8, 2009. The head of the European delegation, Deputy Director General Peter Balas, said that the EC is taking active steps, including fiscal stimulus packages, to foster their recovery and thus a global recovery. He reiterated their commitment to completing the Doha Round and pledged to continue to play a leadership role in forging consensus. About 40 Members made interventions, with many raising deep concerns over the EC's agricultural protection (including the reintroduction of dairy export subsidies) and its trade-restricting regulatory environment, notably technical barriers to trade (TBT) and sanitary and phytosanitary requirements. The EC's regulations on chemicals, REACH, was highlighted by no fewer than 10 delegations. Other issues of concern included the EC's extensive use of trade remedies and preferential trade arrangements, which some Members viewed as discriminatory and limited in scope. Members praised the EC for their leading role in the WTO, the Doha Round, and in Aid for Trade.
END SUMMARY.

12. At the onset of the meeting, Balas criticized the accuracy of the report prepared by the WTO Secretariat in several areas, particularly the notion that the EC's preferential trade arrangements are discriminatory. In the second day opening statement, where the country under review addresses issues raised during the first day, Balas dismissed the numerous concerns on agricultural policies by saying that these can all be addressed by completing the Doha Round. He defended the use of dairy export subsidies as being within WTO limits and justified by changes in market conditions. The Discussant noted that the EC seemed to miss the point raised by so many Members on the export subsidies and warned that this could give rise to similar responses to the global economic crisis by developing countries, using the same "strange" justification. Balas engaged in a lively tit-for-tat discussion with Members, in which he responded to concerns by pointing out areas where they or other Members were deficient. For example, Argentina and Balas had several exchanges on agriculture, where Balas criticized Argentina's export taxes to counter concerns over the EC's export subsidies. When China asserted the EC's use of antidumping was abusive and targeted unfairly against China, Balas responded that there are countries that utilize antidumping more frequently than the EC (including the US) and that China wouldn't have so many cases brought against it if its companies cooperated more fully during the investigations. In response to a US question on when the EC plans to notify its revised list of government procurement entities to the WTO, Balas avoided the question by stating how government procurement access in the EC is far different from the US market since they don't have any equivalent to "Buy American" provisions.

Chairperson's Summary Remarks

13. The Chairman, Ambassador Major of Hungary, summarized the meeting as follows:

14. "The ninth Trade Policy Review of the European Communities has given us all a better understanding of its trade and related policies and their developments since its previous Review in 2007.

Our dialogue has been thorough and comprehensive, stimulated by the full and open participation of Deputy Director General of DG Trade, Mr. Peter Balas, and his delegation. We have also greatly benefited from the perceptive remarks by our discussant, Ambassador Peter Grey, and the active engagement of many Members."

15. "Members commended the EC on its positive economic performance in recent years supported by the continuation of its trade reform. Members appreciated the EC's strong commitment to the multilateral trading system, including the DDA negotiations where the EC was recognized as having played a leadership role in pressing for an ambitious conclusion. The EC was also praised for its technical assistance efforts and for its non-reciprocal preferences to developing countries."

16. "The EC's tariff structure has remained largely unchanged since its last Review, with the average applied MFN tariff rate having decreased slightly from 6.9% in 2006 to 6.7% in 2008. Members commended the EC for maintaining generally low tariff protection for non-agricultural products. With regard to agriculture, Members welcomed the fact that the EC was implementing the 2003 Common Agricultural Policy centred on the move towards the Single Payment Scheme. However, Members observed that agriculture remains protected by a complex tariff structure, with high rates and tariff quotas, and benefits from high levels of domestic support and export subsidies, including the recent reintroduction of export refunds on dairy products which some Members said had sent out a discouraging signal at a time of economic crisis and contraction of world trade. They encouraged the EC to consider the benefits of a more open agriculture sector for consumers and food processors, as well as for exporters, especially from developing countries. The EC referred to its agricultural offer under the DDA, the implementation of which would provide solution to these concerns."

17. "Some delegations raised concerns about the EC's regime on technical barriers to trade in products such as chemicals (REACH), and SPS measures; its state aid and export incentive programmes; and about the lack of harmonization within the EC in areas, such as customs procedures and internal tax rates. It was noted that the EC remains an important user of contingency trade remedies. Other issues of interest to Members included economic prospects and planned reforms in the light of the global economic crisis; competition regime; protection of intellectual property rights; the dismantling of the remaining trade barriers in services at the intra-EC level and further liberalisation vis-à-vis third countries; and the EC regime on, inter alia, fisheries, energy, financial services, telecommunications and postal services, and transport."

18. "Some delegations noted that the EC has continued to build upon its wide network of preferential trade agreements (PTAs); the EC was exhorted to ensure that its PTAs were complementary to the multilateral trading system."

19. "Members appreciated the comprehensive responses provided by the EC delegation, and looked forward to receiving written replies to any unanswered questions within one month."

110. "In conclusion, the wide interest shown by Members, through the depth of the interventions and the large number of advance written questions, are commensurate to the role played by the EC in the multilateral trading system. Members recognized the EC's liberal trade regime for non-agricultural products, and stressed that further reforms, in particular greater liberalization of agriculture, would help it to better allocate resources. Furthermore, Members urged the EC to continue to resist protectionist pressures in this context of the global economic downturn. I invite all Members to abide by this principle."

Statement of the United States

111. The representative of the United States made the following remarks:

112. "Thank you, Chair. We would like to welcome Deputy Director General Peter Balas, Ambassador Eckart Guth, and their entire delegation to the ninth review of the trade policies and practices of the European Communities. We thank the EC delegation for its

thorough submission and for its responses to our questions. We would also like to thank the Secretariat for its informative report, and the discussant, Ambassador Peter Grey, for his and thoughtful contribution."

¶13. "As a point of departure, I would like to take a moment to reflect on the many valuable attributes of our commercial and trade policy relationship with the EC. Like many other WTO Members, the United States has benefitted immensely from its commercial relationship between the United States and the EC. Indeed, EC member States are, collectively, our largest trading partner. Every day, nearly \$2.7 billion in goods and services originating on one side of the Atlantic are delivered on the other side. U.S. and European companies have directly invested nearly \$1.5 trillion in each other's economies supporting tens of millions of jobs. The growth and technological development generated by these immense trade and investment flows have created valuable opportunities for exporters all around the world."

¶14. "The United States and other WTO Members have also benefitted from the EC's strong support, over many decades, for a rules-based multilateral trading system. Finally, it is important to note that the vast majority of our bilateral trade with the EC proceeds without conflict, and the disagreements that we sometimes have on bilateral issues or on multilateral issues of common interest do not interfere with our cooperation on a wide range of issues."

¶15. "Precisely because the EC plays such an important role in international commerce and in global trade policy deliberations, however, we have an obligation to conduct a constructive and responsible review of its trade policies. The Secretariat's comprehensive analysis and the European Commission's detailed description of its trade regime have given us a lot of valuable material with which to work. These documents - as well as the knowledge of EC trade policies that we have acquired through our engagement over many years - have prompted a number of our questions about the relationship of specific trade policies to the EC's WTO obligations. This review of EC trade policy could not come at a more critical time. With the volume of global trade declining significantly for the first time in many years, and with the temptation to erect new barriers to imports growing, Members should expect that their trade policies will be of great interest to their trading partners."

¶16. "We have concerns about EC policies in several areas. I would briefly like to highlight several of these concerns."

¶17. "With respect to agriculture, tariff protection continues to be high in the EC. Agricultural and food products that the United States safely consumes at home and exports to dozens of other Members have been excluded from the EC market by SPS measures that appear to lack sufficient scientific justification. In some cases, the EC has imposed SPS barriers on products that the EC's own scientists have concluded pose no risk to human, animal, and plant life or health. Because of SPS and other barriers, U.S. agricultural exporters have been unable to access fully the EC's post-Uruguay Round market."

¶18. "In the area of technical barriers to trade, the EC is attempting to transform an essentially EC regional standard on olive oil into a Codex standard. Although the EC has not been explicit about the reasons behind its position on linolenic acid, we are concerned that the effect of this position would be to unjustly preclude extra virgin olive oil produced outside the EC from bearing the extra virgin label. The United States also continues to have concerns regarding EC measures that severely restrict the ability of non-EC wine to use common or descriptive and commercially valuable terms, on the grounds that those terms are traditional to European wines. This is particularly disturbing when some of these terms do not have a common definition across all member States, we are aware of no effort to monitor or limit the use of these terms within the EC, and these terms have been used in the EC market on U.S. wines for many years with no apparent problems."

¶19. "EC standards, testing, and certification rules and EC regulatory practices have become increasingly important determinants of market access for firms around the world. Unfortunately, we have found that by the time the EC issues public notices on regulatory

proposals - some with enormous trade implications - deliberations among EC member States have progressed too far to allow for meaningful consideration of the views of trading partners. As we have for several years, we continue to urge the EC to offer WTO Members and their private sector stakeholders meaningful opportunities to comment on regulatory proposals and assurances that those comments will be taken into consideration before a final regulation is promulgated and enforced."

¶20. "Some major EC regulatory initiatives, such as REACH, the new regulatory regime for chemicals, have proven to be extraordinarily - and needlessly - burdensome to exporters. In the case of REACH - which has as one of its objectives increasing the competitiveness of the European chemical industry - the United States has raised several concerns in TBT Committee meetings. These include REACH's disproportionate impact on SMEs; its Only Representative provision; and the continued failure of the EC to remedy discrimination in the treatment of certain "phase in substances," particularly substances in imported cosmetics. We have also expressed concern about the operation of the Substance Information Exchange Fora; the lack of uniform enforcement and interpretation of REACH across the member States; and the analytical methods supporting decisions to place substances on the authorization candidate list and the EC's failure to clarify the legal status of substances placed on the list. We have urged the EC to give careful consideration to the expressions of concern that have been registered by its trading partners and other interested parties on REACH, and to offer a meaningful opportunity to reflect the views of non-EC governments and stakeholders in the implementation process."

¶21. "Both in the area of SPS regulations and with respect to the standards applied to manufactured products, we continue to be concerned that some measures maintained by the EC on the grounds of food safety or environmental protection may not be appropriately supported by science-based risk assessments.

More generally, inconsistent implementation of internal market rules and burdensome regulatory requirements hinder trade for EC and foreign producers alike. We applaud the European Commission's efforts to address lingering internal barriers to the free flow of goods, and look forward to hearing how the Commission intends to address remaining barriers, including those that are not scientifically substantiated, to the free flow of goods at the EC and member State levels."

¶22. "The United States notes the Secretariat's recognition of the EC's status as a key player in the WTO and a major force behind the Doha Development Agenda (DDA) negotiations. Now more than ever we must work together to minimize barriers to trade and find ways to increase trade as a means to reverse the economic downturn. A strong, market-opening agreement for both goods and services in the Doha Round negotiations would be an important step towards fighting the threat of protectionism and a major contribution to addressing the global economic crisis, as part of the effort to restore trade's role in leading economic growth and development. We look forward to continuing our work with the EC and other Members to reach an ambitious and balanced result in the Doha Round."

¶23. "We would like to thank the EC again for providing answers to our written questions. We plan to review the responses carefully, provide substantive comments and request clarifications as necessary on Wednesday."

¶24. "In closing, the United States welcomes this opportunity to learn more about EC trade policies and practices. We are hopeful that our exchanges during this TPR will give the EC and its trading partners guidance on ways that the EC trade policy regime can be improved, increasing the gains we have all made from our commercial relationship with the countries of the European Communities. Thank you."

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